

## 2.

The district court held that the plain language of section 332(c)(3)(A) itself establishes that the measures Cellnet asked the Commission to take were rate regulation and that therefore section 332 preempted the Commission from proceeding with the complaint.

The district court reasoned that Congress would not specifically have provided in subsection (i) that a state could petition for authority to re-regulate unreasonably discriminatory rates unless Congress considered remedying discriminatory rates otherwise to be preempted. Accordingly, the district court determined that subsection (i) "ma[d]e sense" only if section 332 "unequivocally preempt[ed]" the regulation of discriminatory rates. The court concluded that this case involved facial preemption and therefore held that neither *Younger* nor *Burford* abstention applied.

Congress has preempted the state's authority to regulate rates charged by cellular telephone services. Section 332(c)(3)(A) explicitly states: "[N]o State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service. . . ." This preemption of state authority, however, is limited by the remaining language of the section:

[T]his paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. . . . Notwithstanding the first sentence of this subparagraph, a State may petition the [Federal Communications] Commission for authority to regulate the rates for any commercial mobile service and the [Federal Communications] Commission shall grant such petition if such State demonstrates that--

- (i) market conditions with respect to such services fail to protect subscribers adequately from unjust

and unreasonable rates or rates that are unjustly or  
unreasonably discriminatory, . . . .

In interpreting statutes, courts must not be guided by a single sentence or portion of a sentence, but must look to the provisions of the whole law, and to its object and policy. *See Kelly*, 479 U.S. at 43. We are convinced that the district court reached its conclusion on the preemptive effect of subsection (i) on a reading of only a portion of the statutory language, instead of reading the language in context, thus violating *Kelly's* instruction on statutory interpretation.

Subsection (i) allows the FCC to grant a state the authority to re-regulate rates only where the state shows that the market conditions fail to protect a subscriber from unjust and unreasonable rates, or rates that are unjustly and unreasonably discriminatory. Reading this language in context, subsection (i) seems to require, as a prerequisite to gaining authority to re-regulate rates, a widespread breakdown of the competitive market as manifested in general market conditions of unreasonable or unduly discriminatory rates in the state. This broad-based showing required to gain authority to re-regulate rates does not compel the conclusion that the district court reached that states may no longer adjudicate individual cases involving specific allegations of anti-competitive or discriminatory misconduct. Cellnet's complaint alleges that GTE Mobilnet's and New Par's particular conduct violates Ohio statutes and Commission orders because it is unreasonably discriminatory to Cellnet in its position as a reseller, but Cellnet does not allege anything about generalized market conditions that fail to protect subscribers from unjust or discriminatory rates.

FCC regulations interpreting subsection (i) support our reading of this provision. These regulations provide examples of the kind of evidence that would show that market conditions do not adequately protect subscribers. *See* 47 C.F.R. § 20.13(a)(2) (1995). Evidence of

"systematic unjust and unreasonable rates . . . [or] a pattern of such rates, that demonstrates the inability of the commercial mobile radio service marketplace to produce reasonable rates through competitive forces" is such an example. See 47 C.F.R. § 20.13(a)(2)(vii). In contrast, Cellnet's complaint alleges only that GTE Mobilnet and New Par charges Cellnet at discriminatory rates. It does not allege "systematic" unjust rates.

Indeed, before the district court, GTE Mobilnet and New Par commented on the impact of Cellnet's complaint on Ohio's investigation necessary for Ohio to assess whether to ask for authority to re-regulate under subsection (i). They conceded that "In the Cellnet Complaint proceeding, the [Commission] will not gather the information it needs to evaluate an industry . . . . The objective of the Cellnet Complaint is not to determine if market conditions are adequately protecting all subscribers; the objective of the Cellnet Complaint is to regulate the rates charged to Cellnet." In its brief before this court New Par continues to make this argument. Thus, GTE Mobilnet and New Par agree that Cellnet's complaint was not intended to pursue the type of relief contemplated by subsection (i). Only the district court employed this interpretation of this provision.

In August 1994, Ohio filed a petition before the FCC to preserve its right to re-regulate rates under section 332(c), which the FCC denied. The FCC stated: "Unlike some of the opponents of the [Ohio] Petition, we do not view the statutory preference for market forces rather than regulation in absolute terms. If Congress had desired to foreclose state and federal regulation of [mobile service providers] entirely, it could have done so easily." *In the Matter of Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Services*, 10 F.C.C. R. 7842, 7844 (1995). The FCC continued, stating that though Ohio could not fix rates,

it does not follow that its complaint authority under State law is entirely circumscribed. Complaint

proceedings may concern carrier practices, separate and apart from their rates. . . . We view the statutory "other terms and conditions" language as sufficiently flexible to permit Ohio to continue to conduct proceedings on complaints concerning such matters. . . . We conclude, therefore, that Ohio's review of contractual agreements between two or more [commercial mobile radio services] providers, including interconnection agreements and roaming agreements entered into by . . . providers, also falls within the "other terms and conditions" language of section 332(c)(3) to the extent that such review does not directly affect end-user rates. Moreover, nothing in [the Act] indicates that Congress intended to circumscribe a state's traditional authority to monitor commercial activities within its borders. Put another way, we believe Ohio retains whatever authority it possesses under state law to monitor the structure, conduct, and performance of . . . providers in that state.

*Id.* at 7852-53. (footnotes omitted). The FCC believed that Ohio retained whatever authority state law provided to regulate the conduct of mobile service providers within that state. We emphasize, however, that in reaching its decision, the FCC did not rule on the preemption question, since the FCC stated that the record was not sufficiently detailed to allow it to "comment meaningfully" on the regulatory activities contemplated by the Commission in the Cellnet proceedings. We cite the FCC decision only to demonstrate that the preemption issue is complex, and that the statute does not present a facially conclusive claim of preemption.

In sum, we reject the district court's conclusion that the plain language of subsection (i) reflects Congress's clear intent to preempt the states' authority to control discriminatory rates. Subsection (i), on its face, seems to require widespread breakdown of the competitive market for states to get authority to re-regulate rates, and does not

seem to suggest that states may no longer adjudicate individual cases of anti-competitive or discriminatory misconduct. The question of whether federal law preempts state law in this case is complex, but there is no need for us to delve further into it because our precedent instructs that we need only determine whether "facially conclusive" claims of preemption are present. We therefore hold that on its face subsection (i) does not present a "facially conclusive" claim of preemption of the Commission's authority to hear this complaint.<sup>14</sup>

## II.

Because we conclude that this sort of regulation by the states is not facially preempted by section 332, *Bunning* and *Norfolk* do not require us to ignore abstention arguments; instead, we look to *CSXT* and *Federal Express* for guidance.

In *CSXT*, we held that a court should consider two questions; the first being whether the state court has concurrent jurisdiction to decide a preemption issue. 883 F.2d at 473-74. We determined that state courts normally have concurrent jurisdiction over federal issues unless the relevant statute specifies otherwise. *Id.* at 472. Here, there is no indication in the statute that the state court does

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<sup>14</sup>GTE Mobilnet cross-appeals arguing that the district court erred in allowing the Commission to retain jurisdiction over the issues in the complaint relating to bundling. The district court correctly observed that the legislative history specifically provides that bundling falls into the category of "other terms and conditions" reserved to the states. Because the answer to this preemption issue is facially conclusive in light of this legislative history that expressly allows the states to regulate bundling, there was no need for the district court to abstain on this preemption question. See *Bunning*, 42 F.3d at 1011-12; *Norfolk*, 926 F.2d at 573. The district court correctly allowed the Commission to retain jurisdiction of these issues. We therefore reject GTE Mobilnet's argument and affirm the judgment of the district court on this issue.

not have concurrent jurisdiction to decide the preemption question.

We now turn to the second question posed by CSXT: whether we should abstain in favor of the ongoing state proceedings under the principles of *Younger*. "Federal courts abstain out of deference to the paramount interests of another sovereign, and the concern is with principles of comity and federalism." *Quackenbush v. Allstate Insurance Co.*, 116 S. Ct. 1712, 1724 (1996). In *Younger*, the Supreme Court determined that federal courts should not enjoin pending state criminal proceedings started before the filing of a federal suit, except in the unusual situation where an injunction is necessary to prevent immediate and irreparable injury. 401 U.S. at 46. Three requirements have developed for proper application of the *Younger* doctrine: "(1) there must be on-going state judicial proceedings; (2) those proceedings must implicate important state interests; and (3) there must be an adequate opportunity in the state proceedings to raise constitutional challenges." *Sun Refining Marketing Co. v. Brennan*, 921 F.2d 635, 639 (6th Cir. 1990); see *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). We review the district court's abstention analysis de novo. See *Federal Express*, 925 F.2d at 967.

There is no question that the Commission actively was adjudicating Cellnet's complaint when GTE Mobilnet and New Par filed this federal court action. Immediately before GTE Mobilnet and New Par filed their complaint in federal court, the Commission had issued an order requiring the parties to move forward with discovery. We thus conclude that ongoing proceedings existed at the time GTE Mobilnet and New Par filed this action in district court.

Whether "an administrative agency's proceeding will be characterized as judicial or legislative depend[s] on the 'nature of the final act' which it is designed to produce." *Sun Refining*, 921 F.2d at 640 (quoting *New Orleans Pub.*

*Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 371 (1989) ("*NOPSI*"). In *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210 (1908), the Supreme Court explained:

A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore is an act legislative and not judicial in kind . . . .

*Id.* at 226. The Supreme Court decided that the question before the agency was whether a certain rule should be made, and thus concluded that the proceedings were legislative rather than judicial in nature. *Id.* at 229. The Supreme Court, in *NOPSI*, recently reaffirmed *Prentis*'s analysis and held that an action brought by a utility for a rate increase was legislative in nature and thus refused to abstain under the principles of *Younger*. 491 U.S. at 371-73.

Cellnet's complaint concentrates on matters that allegedly occurred before the filing of the complaint. It will require the Commission to consider many factors, including the past and current practices of the telephone companies with respect to their wholesale and retail operations that allegedly violate Ohio's statutory scheme designed to prohibit discriminatory and unjustly preferential practices of public utilities. Cellnet's requests for relief include asking the Commission: (1) to find that GTE Mobilnet and New Par violated the Ohio laws at issue; (2) to order GTE Mobilnet and New Par to comply with these laws; and (3) to hold GTE Mobilnet and New Par liable for damages suffered as a result of the violations of Ohio law. Because the complaint before the Commission asks for a declaration of Cellnet's rights against GTE Mobilnet and New Par "on

and New Par will have an adequate opportunity to raise their federal preemption claims in the state proceedings.

Accordingly, the Commission and Cellnet have satisfied every requirement for the proper application of *Younger* abstention. We therefore hold that the district court should have abstained from consideration of GTE Mobilnet's and New Par's motion for relief.

Having decided the case on *Younger* abstention, we need not consider the arguments based on *Pullman* abstention or the remaining issues raised by the parties.

We affirm the district court's judgment on the bundling issue and reverse the judgment in all other respects. We remand this case to the district court with directions to dissolve the preliminary injunction against the Commission and to dismiss the case. The Commission must be allowed to resolve this preemption question.



present or past facts and under laws supposed already to exist" instead of requesting "the making of a rule for the future", we hold that the proceedings before the Commission are judicial in nature. See *id.* at 372.

In *NOPSI*, the Supreme Court acknowledged that "[t]he regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States." 491 U.S. at 365. The Court instructed that when considering the "substantiality of a State's interest in its proceedings we do not look narrowly to its interest in the *outcome* of a particular case . . . [but to] the importance of the generic proceedings to the State." *Id.*; see *Sun Refining*, 921 F.2d at 641. Thus the appropriate question here is not whether Ohio has a substantial interest in GTE Mobilnet's and New Par's conduct, but whether it has a substantial, legitimate interest in regulating commercial mobile service providers and in prohibiting anti-competitive conduct by such providers. In light of *NOPSI*'s holding that the regulation of utilities is an important function of the states, we hold that Ohio has a substantial, legitimate interest in the proceedings at issue here.

Finally, we must consider whether the state proceedings afford an adequate opportunity to raise constitutional claims. See *Middlesex*, 457 U.S. at 431-32. Even where constitutional claims may not be brought in state administrative proceedings, the third element of *Younger* is satisfied where the constitutional claims can be heard during state court judicial review of the administrative proceedings. See *Ohio Civil Rights Comm'n v. Dayton Christian Schs., Inc.*, 477 U.S. 619, 629 (1986); accord see, e.g., *Sun Refining*, 921 F.2d at 641; *CSXT*, 883 F.2d at 474; *Watts v. Burkhardt*, 854 F.2d 839, 848 (6th Cir. 1988). Judicial review of a final Commission order can be obtained in the form of a direct appeal to the Supreme Court of Ohio. See Ohio Rev. Code Ann. § 4903.13 (Banks-Baldwin 1994). We conclude that GTE Mobilnet

September 17, 1997

CERTIFIED MAIL # P 131,353,134

Mr. Thomas Minardo  
AirTouch Cellular  
3 Summit Park Drive  
Suite 600  
Cleveland, Ohio 44131

RECEIVED  
DEC 23 1997  
FCC MAIL ROOM

Dear Mr. Minardo,

As of today, I still have not received a response to my letters of August 8, 12 and 25, 1997. I also expect that either Mike Tricarichi or Scott Ginsburg will be contacted this week as to when and how Cellnet will receive their digital demo phone. Since my last letter to you, we have received further evidence of AirTouch providing customers with far superior rates than those being offered to Cellnet. Enclosed you will find a copy of an offer matching a GTE rate plan. This customer is receiving 288 free minutes per month for the life of the contract, after the initial promotional period, plus a free Audiovox 440 phone. Not taking into account the value of the phone, Cellnet's cost for the same usage would be \$106.00 per month.

Furthermore, it has come to my attention that Jeff Sussel of AirTouch has offered Tony Dem Mauro Trucking 1400 minutes at \$100.00. Written confirmation of this offer is pending.

Stating the obvious, these offers are far below the wholesale rate paid by Cellnet. In the next few days, I will provide you with a list of phone numbers that Cellnet would like placed on these two plans. In the interim, I would appreciate a response to my other requests.

Thank you for your cooperation. I am looking forward to hearing from you soon.

Sincerely,

*Larry D. Dubin*

Larry D. Dubin  
Corporate Attorney

cc: Terry Tindel

5175 Emerald Parkway

Dublin, OH 43017



September 12, 1997.

**CERTIFIED MAIL # P 131 353 140**

Mr. Thomas Minardo  
AirTouch Cellular  
3 Summit Park Drive  
Suite 600  
Cleveland, Ohio 44131

Dear Mr. Minardo,

I am writing to you regarding your conversation today with Scott Ginsburg concerning the digital service that Airtouch is testing. You told him that you would let him know within a couple of days when Cellnet could receive a digital phone to test the new service. It is my understanding that all Airtouch personal and dealers are using the new digital service to provide feedback concerning the new service.

Please let us know if you will be delivering the digital demo phone or where Cellnet can pick up the equipment. It will be mutually beneficial to both companies that Cellnet be able to test out this new service as quickly as possible. It will provide ample time for our company to provide beneficial comments and feedback of areas of concern prior to the launch of this service.

Also, could you please provide Cellnet with all the wholesale rates that for this service, including features, roaming and equipment.

Thank you for your cooperation.

Sincerely,

Larry D. Dubin  
Corporate Attorney



**PORTER, WRIGHT,  
MORRIS & ARTHUR**

Attorneys & Counselors at Law

KATHLEEN MCMANUS TRAFFORD

614-227-1915

ktrafford@porterwright.com

41 South High Street  
Columbus, Ohio 43215-6194  
Telephone: 614-227-2000  
Facsimile: 614-227-2100  
Nationwide: 800-533-2794

September 23, 1997

Larry D. Dubin  
Corporate Attorney  
Cellnet Cellular Service  
23632 Mercantile Road  
Beachwood, Ohio 44122

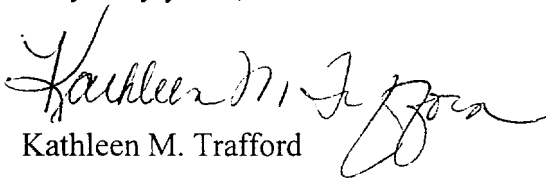
Dear Mr. Dubin

This letter responds to your letter of September 12, 1997 to Mr. Minardo concerning AirTouch's current testing of digital service. When Mr. Minardo spoke with Mr. Ginsburg on September 12, 1997, he said only that he would try to include Cellnet in the testing phase. Mr. Minardo did not say that Cellnet could receive a digital demo phone to test the service.

At the present time, the digital test phase involves most of AirTouch's Cleveland employees and several representatives from its network of authorized agents. AirTouch believes that the current number of phones included in the test is sufficient to ensure a successful trial phase, and, therefore, will not provide demo equipment to Cellnet.

AirTouch will notify all its resellers when wholesale pricing for this new product is available.

Very truly yours,

  
Kathleen M. Trafford



**PORTER, WRIGHT,  
MORRIS & ARTHUR**

Attorneys & Counselors at Law

KATHLEEN MCMANUS TRAFFORD

614-227-1915

ktrafford@porterwright.com

41 South High Street  
Columbus, Ohio 43215-6194  
Telephone: 614-227-2000  
Facsimile: 614-227-2100  
Nationwide: 800-533-2794

September 17, 1997

Larry D. Dubin  
Corporate Attorney  
Cellnet Cellular Service  
23632 Mercantile Road  
Beachwood, Ohio 44122

Dear Mr. Dubin

This letter responds to your letters of August 8, 12 and 25, 1997.

The proposals made to The Kassouf Company and the Diamond Company were made in the context of trying to meet offers made to these existing AirTouch customers by another cellular provider. Offers of this type were one of the issues addressed in the federal court action last Spring. I would refer you to Mr. Minardo's affidavit and deposition for additional background on such offers. It is also my recollection that Mr. Tricarichi was informed of the uses and requirements for the One Choice plan in discussions with Mr. Minardo last Spring in the weeks before Cellnet voluntarily dismissed the federal court action.

AirTouch did not provide "free weekend calling" to MCI as a reseller of AirTouch service. In addition to being a reseller of cellular service, MCI was also a mass retailer for AirTouch and was offering free weekend calling at Sam's Clubs in accordance with its retailer agreement.

I trust these clarifications are responsive to your earlier inquiries. If Mr. Tricarichi wants to discuss the terms, conditions and qualifications for any retail rate plan or promotion offered by AirTouch, or wants to determine the best retail rate plan for which Cellnet qualifies, he should, of course, feel free to contact Tom Minardo or Sandy Coghill directly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen M. Trafford".

Kathleen M. Trafford



23632 Mercantile Road Beachwood, Ohio 44122 • Cleveland (216) 765-8930 • Toll Free 1-800-776-8578 • Fax (216) 765-0885

September 22, 1997

CERTIFIED MAIL # P 131 353 149

Ms. Kathleen M. Trafford Esq.  
Porter, Wright, Morris & Arthur  
41 South High Street  
Columbus, Ohio 43215-6194

Dear Ms. Trafford,

In response to your letter of September 17, 1997, there are a few issues that need further clarification. First of all, Airtouch's quote to The Kassouf Company was in direct response to an offer made by Cellnet. The Kassouf Company is a long distance customer of Cellnet's and at the request of the Kassouf Company, Cellnet made an offer to provide them cellular service. The follow-up proposal to the Kassouf Company by AirTouch did not merely meet the offer proposed by Cellnet, as your letter suggests, but drastically undercut the rate at which Cellnet purchases service from AirTouch. Furthermore, there never was a resolution as to the issues brought in the federal court action.

My letters of August 8 and 25, 1997 requested that Mr. Minardo notify Cellnet as to the requirements to be placed on these retail rate plans. However, as in the past, Mr. Minardo deferred his answer to counsel. Your letter likewise has skirted the issue and fails to provide an answer. Therefore, I would encourage that a meeting among Mr. Tricarichi, Mr. Minardo, Ms. Coghill and counsel would most efficiently and effectively resolve these problems. Please contact me at your earliest convenience as to when this meeting can take place.

Thank you for your cooperation. I am looking forward to hearing from you soon.

Sincerely,

A handwritten signature in dark ink, appearing to read "Larry D. Dubin".

Larry D. Dubin  
Corporate Attorney



August 8, 1997.

**CERTIFIED MAIL # P 131 353 146**

Mr. Thomas Minardo  
AirTouch Cellular  
3 Summit Park Drive  
Suite 600  
Cleveland, Ohio 44131

Dear Mr. Minardo,

Enclosed please find a copy of a proposal that was offered by AirTouch Cellular and subsequently accepted by The Kassouf Company. I know that you and Mike Tricarichi have spoken regarding this proposal. As promised, please find enclosed an analysis of The Kassouf Company's May 30, 1997 bill. Based on this bill, it is evident that The Kassouf Company is paying below Cellnet's cost for the same service. The effective per minute rate being charged is \$0.1985 peak and \$0.0967 off-peak. While Cellnet's cost is \$192.00 less for the monthly plan charges, Cellnet's cost for peak and off-peak minutes is \$310.91 more than that charged to the Kassouf Company. Therefore, Cellnet's cost for the same usage on this bill would be \$135.07 higher than what the Kassouf Company was charged.

Furthermore, this does not take into account the fact that The Kassouf Company is being charged in 30 second billing increments and \$.30 per minute for roaming charges in AirTouch markets, whereas, Cellnet is being charged in full minute billing increments and \$.37 per minute for roaming in these same markets. Also, not included in this analysis is the benefit provided from the free equipment given The Kassouf Company.

In the next week or two, we will provide you with a list of numbers that we would like placed on this rate plan. In the interim, please provide me with a list of the manufacturers and model numbers of the equipment that Cellnet can choose.

Thank you for your anticipated cooperation in this matter.

Sincerely,

Larry D. Dubin  
Corporate Attorney



23632 Mercantile Road Beachwood, Ohio 44122 • Cleveland (216) 765-8930 • Toll Free 1-800-776-8578 • Fax (216) 765-0885

October 8, 1997.

CERTIFIED MAIL # P 063 558 374

Mr. Thomas Minardo  
AirTouch Cellular  
3 Summit Park Drive  
Suite 600  
Cleveland, Ohio 44131

Dear Mr. Minardo,

As per my letter of August 8, 1997, enclosed please find a diskette containing the list of numbers that we would like placed on the rate plan provided to The Kassouf Company. The plan is \$22.99 access, .25 peak and .15 off peak, plus this includes 150 minutes per month.. The list contains approximately 5300 numbers that should be on this plan for the current billing period. Based on our projections, this plan will provide a monthly savings to Cellnet of \$66,351.34.

In addition, please find enclosed a similar rate plan provided to Interstate Lift Trucks, Inc. This plan also includes unlimited nights and weekends at no charge

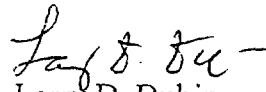
Also, the enclosed diskette contains 572 customer telephone numbers that we would like placed on free nights and weekends for the current billing period. The monthly savings to Cellnet is approximately \$7,739.05.

In a separate matter, Cellnet will be making their bill payment on October 12, 1997, because the reseller tape was received two days late.

On September 22, 1997, I sent Kathleen Trafford a letter requesting a meeting among myself, Michael Tricarichi, you, Sandy Coghill and Ms. Trafford to discuss the terms, conditions and qualifications of the enclosed retail rate plan. To date I have not received a response to my request. If you have any suggestions as to how we can facilitate a meeting amongst the parties, please contact me at the above telephone number.

Thank you for your cooperation in this matter.

Sincerely,

  
Larry D. Dubin  
Corporate Attorney

cc: Terry Tindel  
Kathleen M. Trafford



*The Voice Is Clear! The Choice Is Clear!*







23632 Mercantile Road Beachwood, Ohio 44122 • Cleveland (216) 765-8930 • Toll Free 1-800-776-8578 • Fax (216) 765-0885

October 8, 1997.

**CERTIFIED MAIL # P 063 558 374**

Mr. Thomas Minardo  
AirTouch Cellular  
3 Summit Park Drive  
Suite 600  
Cleveland, Ohio 44131

Dear Mr. Minardo,

As per my letter of August 8, 1997, enclosed please find a diskette containing the list of numbers that we would like placed on the rate plan provided to The Kassouf Company. The plan is \$22.99 access, .25 peak and .15 off peak, plus this includes 150 minutes per month.. The list contains approximately 5300 numbers that should be on this plan for the current billing period. Based on our projections, this plan will provide a monthly savings to Cellnet of \$66,351.34.

In addition, please find enclosed a similar rate plan provided to Interstate Lift Trucks, Inc. This plan also includes unlimited nights and weekends at no charge

Also, the enclosed diskette contains 572 customer telephone numbers that we would like placed on free nights and weekends for the current billing period. The monthly savings to Cellnet is approximately \$7,739.05.

In a separate matter, Cellnet will be making their bill payment on October 12, 1997, because the reseller tape was received two days late.

On September 22, 1997, I sent Kathleen Trafford a letter requesting a meeting among myself, Michael Tricarichi, you, Sandy Coghill and Ms. Trafford to discuss the terms, conditions and qualifications of the enclosed retail rate plan. To date I have not received a response to my request. If you have any suggestions as to how we can facilitate a meeting amongst the parties, please contact me at the above telephone number.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry D. Dubin".

Larry D. Dubin  
Corporate Attorney

cc: Terry Tindel  
Kathleen M. Trafford

December 11, 1997.

**CERTIFIED MAIL # P 063 558 375**

Mr. Thomas Minardo  
AirTouch Cellular  
3 Summit Park Drive  
Suite 600  
Cleveland, Ohio 44131

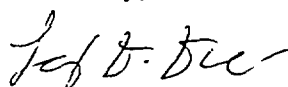
Dear Mr. Minardo,

I am writing this letter as a follow up to my September 12, 1997 letter to you and Mike Tricarichi's conversation with Sandy Coghill regarding AirTouch's digital service . It has come to our attention that Airtouch began offering digital or Powerband Service on November 24, 1997 (see enclosed memo). Also, please find enclosed the Powerband Rate Plans Price Matrix for the Cleveland, Akron and Canton markets.. These rates are far below the wholesale rate that Cellnet is currently paying for service. I am requesting again that you please provide Cellnet with the wholesale rates for Powerband Service, including features, roaming and equipment.

If it is your intention not to provide Cellnet with the requested information, which by law AirTouch is required to do, please provide specific reasons as to why my request is being denied.

Thank you for your cooperation.

Sincerely,



Larry D. Dubin  
Corporate Attorney

cc: Terry Tindel  
Kathleen Trafford, Esq.  
Jay Agranoff, Esq.





AirTouch Cellular  
5175 Emerald Parkway  
Dublin, OH 43017

Telephone: 614 568 2000

TO: Agent Principals

FROM: Gloria Obie  
Marketing Implementation

DATE: November 17, 1997

SUBJECT: 4<sup>th</sup> Quarter '97 Ohio Markets Powerband Promotion

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We are pleased to announce the 4<sup>th</sup> Quarter '97 Powerband Promotion which begins on Monday, November 24, 1997 through Wednesday, December 31, 1997. This promotion is available with Powerband service in all Ohio markets except, Toledo, Lima, Sandusky and Greater Mansfield. For details about Powerband service, refer to the Ohio Powerband Procedures released under separate cover.

**IMPORTANT:** Initially, the Qualcomm QCP 820 will be the featured phone for this promotion, however, quantities are limited. As soon as supplies of the Nokia 2180 are available, the Nokia will become the featured phone. You will be notified of the change as soon as the information is available.

This promotional offer is dependent upon digital phone availability and may be discontinued at any time.

If you have any questions regarding the enclosed materials, please contact your Indirect Channel Specialist or the Marketing Implementation Department at 1-800-851-4366.

cc: Agent Managers



AirTouch Cellular  
5175 Emerald Parkway  
Dublin, OH 43017

Telephone: 614 560 2000

To: Agent Principals

From: Gloria Obie  
Marketing Implementation

Date: November 19, 1997

Re: Ohio Powerband<sup>SM</sup> Service - Cleveland, Columbus & Cincinnati

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We are pleased to introduce Powerband<sup>SM</sup> Digital Service in Cleveland, Columbus and Cincinnati beginning Monday, November 24, 1997.

Enclosed please find an Overview of the service, Agent Procedures and an Ohio Segmented Offers Matrix. In addition to the offers enclosed, new Powerband rates and the 4<sup>th</sup> Quarter Powerband Promotion have been released to you under separate cover.

Only select Sales and Service Centers and Agents in Cleveland, Columbus and Cincinnati will be considered a Powerband *stocking* location. Other Ohio area Centers and Agents can order very limited quantities and will be allowed to market this service on a special order basis only.

**IMPORTANT:** The November 24th launch date for these markets is subject to change. In the event a date needs to be changed for a particular market, the communication will be released under separate cover.

If you have any questions, please contact your Indirect Channel Specialist or the Marketing Implementation Department at 1-800-851-4366.

cc: Agent Managers

**POWERBAND RATE PLANS PRICE MATRIX**  
**CLEVELAND/AKRON/CANTON MARKET**  
**EFFECTIVE: NOVEMBER 24, 1997**

Rate Plan	Monthly Access	Included Minutes	Tiers	Home Market Peak Rate	Home Market Off-Peak/ Other Rate	Paging Rate	*Data Rate/OMNI Code	Roaming	Included Features	OMNI Codes
Powerband 40 <i>Includes 1<sup>st</sup> Minute Inbound Free</i> <i>Requires Powerband Service</i> <i>Del Package 12 months</i>	\$34.99	40	N/A	\$0.26	\$0.26	\$8.95	\$0.24/0.24 D2424	Traveler	DB, CW, CF, 3WC, BVM, Caller ID, Voice Mail Alert (when available)  Feature Package: <b>PBFP2</b>	PB40
Powerband 350 <i>Promotional rate available through 12/31/97</i> <i>Includes 1<sup>st</sup> Minute Inbound Free</i> <i>Requires Powerband Service</i>	\$49.99	350	351 - 499 500 - 749 750 +	\$0.21 \$0.20 \$0.19	\$0.21 \$0.20 \$0.19	\$3.95	\$0.18/0.18 D1818	Explorer	DB, CW, CF, 3WC, BVM, ECD, Caller ID, Voice Mail Alert (when available)  Feature Package: <b>PBFP3</b>	PB350
Powerband 1000 <i>(Promotional rate - available through 12/31/97)</i> <i>Includes 1<sup>st</sup> Minute Inbound Free</i> <i>Requires Powerband Service</i>	\$99.99	1000	N/A	\$0.10	\$0.10	\$3.95	\$0.10/0.10 D1010	Explorer	DB, CW, CF, 3WC, BVM, ECD, Caller ID, Voice Mail Alert (when available)  Feature Package: <b>PBFP3</b>	P1000

**IMPORTANT NOTES:**

**Peak Hours:** 6:00 am - 9:00 pm Monday - Friday  
**Off-Peak Hours:** 9:00 pm - 6:00 am Monday - Friday, and Holidays.  
**Other Hours:** All day Saturday and Sunday  
**Billing Increments:** These rate plans will bill in full minute increments.  
**Multi-Line Credits:** Multi-Line Credits (MLC's) will NOT apply to these rate plans; however, adding these rate plans will NOT disqualify lines on the account from receiving multi-line credits.  
**Pricing Tiers:** All home market minutes will be used to determine the pricing tier.  
**Expanded Usage Options:** Unlimited Weekends and Unlimited Nights & Weekends will be available with these rate plans.  
**Features:** CF=Call Forwarding DB=Detailed Billing  
 CW=Call Waiting BVM=Basic Voice Mail  
 3WC=3-Way Conference Calling ECD=Extended Call Delivery

\*\*\*FOR INTERNAL USE ONLY\*\*\*

12/004/004



23632 Mercantile Road Beachwood, Ohio 44122 • Cleveland (216) 765-8930 • Toll Free 1-800-776-8578 • Fax (216) 765-0885

5/22/97

Mr. Mark Wetterling  
AT&T Wireless  
7900 Xerxes Ave So.  
Minneapolis Minn. 55431

Dear Mark:

Thank you for taking time to talk with me regarding a potential resale relationship between our two companies.

As you may know, Cellnet is the largest cellular service reseller in the state of Ohio with approximately 15,000 cellular subscribers. Cellnet was recently rated 13th largest in the U.S. by RCR Magazine. As such, we have a serious interest in the resale of your wireless products in your Ohio Markets, especially in the Cleveland/Akron/Canton areas.

While I understand that your PCS system in these areas is not yet operative, it is my understanding that it soon will be. It is therefore imperative that we begin our resale discussions as soon as possible, so that we may minimize any delays in start-up once your system comes on-line.

I look forward to hearing from you in the near future so that we may begin our negotiations.

Sincerely yours

A handwritten signature in dark ink, appearing to read "Michael Tricarichi".

Michael Tricarichi  
President



*The Voice Is Clear! The Choice Is Clear!*





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5/22/97

Ms. Chris Stadler  
Nextel Communications  
31200 Carter Street  
Solon, Ohio 44139

Dear Chris:

Thank you for taking time to talk with me regarding a potential resale relationship between our two companies.

As you know, Cellnet is the largest cellular service reseller in the state of Ohio, and was recently rated 13th largest in the U.S. by RCR Magazine. As such, we have a serious interest in the resale of your wireless products.

While I understand that you do not now have the technical capability to support resellers, it is my understanding that soon you will have such capability. It is therefore imperative that we begin our resale discussions as soon as possible, so that we may minimize any delays in start-up once the capability is in place.

I look forward to hearing from you in the near future so that we may begin our negotiations.

Sincerely yours

A handwritten signature in dark ink, appearing to read "Michael Tricarichi".

Michael Tricarichi  
President



*The Voice Is Clear! The Choice Is Clear!*

